

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IT4, LLC,

Plaintiff,

v.

Joyce Cordell, Wade Cordell, Restart Your
Life, LLC, and iSmart Mobile Marketing,
LLC,

Defendants.

C/A No. 3:13-cv-03177-JFA

ORDER

Before the court is Defendants' Motion to Strike (ECF No. 28) the affidavit of Ivy Johnson, IV (ECF No. 22), filed in support of Plaintiff's Motion for a Preliminary Injunction (ECF No. 9). Plaintiff moved for a Preliminary Injunction on November 26, 2013 and Defendants responded on January 13, 2014, pursuant to a consent extension request granted by this court. Plaintiff did not file a reply brief. However, on January 27, 2014—three days after the expiration of the deadline within which to file a reply brief—Plaintiff filed Ms. Johnson's affidavit.

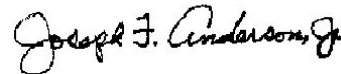
Fed. R. Civ. P. 6(c)(2) provides: "[a]ny affidavit supporting a motion must be served with the motion." Some courts have interpreted this rule to allow for certain affidavits to be filed with a reply. *Robinson v. Empire Equity Grp., Inc.*, 2009 WL 4018560 (D. Md. Nov. 18, 2009) (FRCP 6(c)(2) "does not preclude affidavits supporting a reply brief when they respond to evidence supporting an opposition brief.). Ms. Johnson's affidavit, however, was not submitted with a reply brief, nor was Ms. Johnson's affidavit filed within the deadline given by the court to

file a reply brief. Therefore, the court grants Defendants' Motion to Strike the affidavit of Ivy Johnson, IV, as it is compelled to do by the plain language of Fed. R. Civ. P. 6(c)(2).

In response to Defendants' Motion to Strike, Plaintiff offers no explanation for the late filing of Ms. Johnson's affidavit. As Defendants point out, Plaintiff could move the court for leave to file Ms. Johnson's affidavit upon a showing of excusable neglect. Fed. R. Civ. P. 6(b)(1)(B). The court will also permit Plaintiff to establish Ms. Johnson's testimony, as a live witness, at hearing on Plaintiff's Motion for a Preliminary Injunction.

IT IS SO ORDERED.

February 14, 2014
Columbia, South Carolina

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge